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13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**
15

16 ANA BIOCINI, individually and as joint
17 successor-in-interest to Decedent HERNAN
18 JARAMILLO; RAFAEL JARAMILLO,
19 individually and as joint successor-in-interest to
20 Decedent HERNAN JARAMILLO; MARIA
21 CLAUDIA JARAMILLO, individually and as
22 joint successor-in-interest to Decedent HERNAN
23 JARAMILLO, DIEGO JARAMILLO,
24 individually and as joint successor-in-interest to
25 Decedent HERNAN JARAMILLO, PATRICIA
26 JARAMILLO, individually and as joint
27 successor-in-interest to Decedent HERNAN
28 JARAMILLO, FELIPE JARAMILLO,
individually and as joint successor-in-interest to
Decedent HERNAN JARAMILLO, JUAN
CARLOS JARAMILLO, individually and as
joint successor-in-interest to Decedent HERNAN
JARAMILLO; and THE ESTATE OF HERNAN
JARAMILLO,

Plaintiffs,

vs.

CITY OF OAKLAND, a municipal corporation;
CARLOS NAVARRO, individually and in his
capacity as an officer for the CITY OF
OAKLAND Police Department; IRA

Case No.: 3:14-cv-03315-TEH

**PLAINTIFFS' NOTICE OF MOTION,
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION TO SET ASIDE A SETTLEMENT
AGREEMENT**

Date: March 21, 2016

Time: 2:00 p.m.

Location: 12, 19th Floor

Judge: Hon. Thelton E. Henderson

1 ANDERSON, individually and in his capacity as
2 an officer for the CITY OF OAKLAND Police
3 Department; STEVEN STOUT, individually and
4 in his capacity as an officer for the CITY OF
5 OAKLAND Police Department; and DOES 1-
6 25, inclusive, individually and in their official
7 capacity as police officers for the CITY OF
8 OAKLAND, jointly and severally,
9
10 Defendants.

11 TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

12 PLEASE TAKE NOTICE that on March 21, 2016, at 2:00 p.m. or as soon thereafter as the
13 matter can be heard, in the courtroom of the Thelton E. Henderson, situated at 450 Golden Gate
14 Avenue, San Francisco, California 95113, Plaintiffs, ANA BIOCINI, FELIPE JARAMILLO, and
15 PATRICIA JARAMILLO (hereinafter and collectively "Plaintiffs"), will make a motion to the Court
16 requesting an Order Setting Aside an Agreement to Settle.

17 This motion is made pursuant to California Civil Code § 664.6 and is predicated on the
18 grounds that setting aside the settlement is necessary because there was not a complete assent to the
19 material terms of the agreement by all Plaintiffs and setting aside the settlement will not prejudice the
20 defendants.

21 This motion is further based upon this Notice; the attached Memorandum of Points and
22 Authorities; the attached Declaration of DeWitt M. Lacy; upon the records and files in this action;
23 and upon such further evidence and argument as may be presented prior to or at the time of hearing
24 on the motion.

25 Dated: February 24, 2016

26 **THE LAW OFFICES OF JOHN L. BURRIS**

27 /s/ DeWitt M. Lacy
28 DeWitt Lacy
Attorneys for Plaintiff

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The parties participated in multiple Settlement Conferences with Magistrate Judge Laurel Beeler on April 15, 2015 and January 8, 2016, respectively. After the January 8, 2016 Settlement Conference, the parties entered into a settlement agreement, by and through their respective counsel. Subsequently, Plaintiffs ANA BIOCINI, FELIPE JARAMILLO, and PATRICIA JARAMILLO informed their counsel, John L. Burris and DeWitt M. Lacy, that they had not assented to the material terms of the January 8, 2016 Settlement Conference. Plaintiffs are now moving to set aside the settlement agreement pursuant to California Civil Code § 664.6.

This case arises out of the tragic unlawful detention, arrest, assault and wrongful death of Decedent Hernan Jaramillo at the hands of Defendant CITY OF OAKLAND Police Officers CARLOS NAVARRO, IRA ANDERSON, and STEVEN STOUT. On July 9, 2013. Plaintiffs filed this action on July 22, 2014 against Defendants.

Plaintiffs' Motion to Set Aside a Settlement
Biocini, et al. v. City of Oakland, et al.
Case No: 3:14-cv-03315-TEH

1 JARAMILLO participated via Skype.¹ However, the parties were not able to agree on any terms of
2 settlement and it was determined that discovery was necessary before settlement discussions could
3 resume.

4 Thereafter, the pleadings were amended to include the specific names of defendant officers,
5 CARLOS NAVARRO, IRA ANDERSON, and STEVEN STOUT. The parties also conducted a
6 substantial amount of discovery including depositions of all Plaintiffs, depositions of all named
7 defendants, depositions of five (5) witnesses. Written discovery was propounded that called for the
8 production of over one thousand six-hundred (1600) pages of responsive documents, over sixteen
9 (16) hours of audio files, and over two (2) hours of video files. In addition, Plaintiffs' disclosed two
10 (2) expert reports requiring the examination of over one thousand (1000) additional pages of
11 discovery.

12 After preparing for trial and answering motions, Plaintiffs returned to Judge Beeler to
13 participate in another Settlement Conference on January 8, 2016. Again, BIOCINI appeared with
14 Plaintiffs' counsel, John L. Burris and DeWitt M. Lacy at the Settlement Conference. FELIPE
15 JARAMILLO, PATRICIA JARAMILLO, RAFAEL JARAMILLO, MARIA CLAUDIA, and
16 DIEGO JARAMILLO appeared via Skype. All Plaintiffs had the ability to hear and see each other
17 during the Settlement Conference. Judge Beeler and Plaintiffs' counsel spoke with Plaintiffs in Judge
18 Beeler's chambers, through the assistance of a Spanish translator from Mr. Burris's office, Johana
19 Estrada. Neither Mr. Burris or Mr. Lacy are fluent in Spanish. Mr. Lacy explained the offer of
20 settlement which had been made by Defendants. He also explained the specific implications of
21 accepting the offer of settlement, including the finality of the agreement. After much discussion,
22 PATRICIA JARAMILLO, FELIPE JARAMILLO, and MARIA CLAUDIA JARAMILLO
23 communicated to Mr. Burris and Mr. Lacy their satisfaction with the terms of settlement, but noted
24 they wanted to hear what their brothers in Bogota had to say about the settlement. Initially, RAFAEL
25 JARAMILLO was very much opposed to the settlement but communicated to Mr. Burris and Mr.

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27
28 ¹ Skype is an application that provides video and voice call services. Plaintiffs requested that they be allowed to
participate in the Settlement Conference via Skype because Patricia, Felipe, and Maria Claudia reside in Cali, Colombia
and requiring their physical presence at the Settlement Conference would present a substantial hardship for Plaintiffs.

1 Lacy, that though he was displeased with the amount of the settlement, he would acquiesce to the will
2 of the majority.² Very soon after RAFAEL JARAMILLO finished speaking, the internet connection
3 in Judge Beeler's chambers suddenly failed, and the parties were not able to re-establish
4 communication with RAFAEL, DIEGO, PATRICIA, FELIPE, and MARIA CLAUDIA
5 JARAMILLO. BIOCINI also agreed to the terms of the settlement and voiced her assent.

6 Thereafter, counsel for the defense, Plaintiffs' counsel, and BIOCINI attempted to state an
7 oral agreement on the record in Judge Beeler's courtroom. In the courtroom, Judge Beeler described
8 the material terms of the settlement. The terms of the settlement included a payment of \$450,000.00
9 from the Defendants to Plaintiffs. The payment was to be made in return for the dismissal of
10 Plaintiff's entire case with prejudice with a mutual waiver of costs. Judge Beeler then asked Mr.
11 Lacy if he had communicated the terms of the settlement to the Plaintiffs. Mr. Lacy informed the
12 Court that he had. Judge Beeler then asked if the Plaintiffs who were not present in the courtroom
13 had agreed to the terms of settlement. Mr. Lacy said, "Yes." Then, Judge Beeler asked BIOCINI if
14 she agreed to the terms of settlement. BIOCINI said "Yes." Unbeknownst to all persons present, the
15 courtroom's microphones were not recording the oral agreement. On January 11, 2016, Judge Beeler
16 contacted both counsel via teleconference explaining the technical error and requesting the parties
17 make an oral record of the agreement via teleconference. Counsel for the parties agreed and Judge
18 Beeler, Mr. David Pereda, counsel for the Defendants, and Mr. Lacy did in fact make an audio record
19 of the agreement on January 11, 2016.

20 On January 27, 2016, BIOCINI called Mr. Lacy at his office and informed him of a potential
21 problem with the settlement. BIOCINI informed Mr. Lacy that her brother and sister, FELIPE and
22 PATRICIA, in Colombia had not made a final decision with regards to final the settlement. Mr. Lacy
23 thereafter emailed all the family members individually regarding the settlement. Subsequently, Mr.
24 Lacy has received several email communications from all the Plaintiffs in regards to the settlement.
25 All the Plaintiffs have also spoken with Mr. Lacy over the phone or via Skype regarding settlement.
26

27 Rafael and Diego Jaramillo reside in Bogota, Colombia. Judge Beeler permitted participation of Plaintiffs via Skype and
28 the Defendants did not object to Plaintiffs' request.

² Rafael voiced his satisfaction with the settlement and Juan Carlos appeared by proxy through Patricia Jaramillo, agreeing to make his decision consistent with the majority of the family.

1 The present summation of these communications is as follows: RAFAEL, DIEGO, MARIA
2 CLAUDIA, and JUAN CARLOS JARAMILLO are content with the settlement offer of January 8,
3 2016. However, BIOCINI, PATRICIA, and FELIPE JARAMILLO want to proceed to trial. FELIPE
4 and PATRICIA both contend though they voiced a preliminary satisfaction with the settlement
5 amount, they expected to have a time to discuss settlement with their family outside of the presence
6 of counsel and Judge Beeler before giving their final decision, especially considering the abrupt end
7 to their participation at the January 8, 2016 settlement conference. After viewing the video footage
8 of their brother's death on January 27, 2016 for the first time, they decided it was necessary to
9 proceed to trial in pursuit of justice. BIOCINI contends she was pressured into agreeing to the
10 settlement and only agreed because she believed she had to make a decision against what seemed to
11 be the will of her family. Furthermore, BIOCINI contends the settlement did not give due
12 consideration to her individual claim for Negligent Infliction of Emotional Distress.

13 **ARGUMENT**

14 **I. STANDARD OF REVIEW**

15 The court may entertain a motion to enter a judgment under a settlement agreement's terms if
16 the parties to pending litigation stipulate, in writing signed outside the court, or orally before the
17 court, for settlement of the case or any part of it. Code Civ. Proc. § 664.6. Section 664.6 provides a
18 summary procedure by which the trial court can specifically enforce an agreement settling pending
19 litigation without the need of a second lawsuit. *Kirby v. Southern Cal. Edison*, 78 Cal.App.4th 840,
20 at 843 (2000). On its face, § 664.6 appears to provide a means by which parties who have settled
21 their litigation may move by stipulation to have judgment entered according to the settlement's terms.

22 Judgment under a § 664.6 motion may be proper even if there are disputed facts regarding a
23 settlement, provided the parties had earlier agreed on the agreement's material terms, or had a
24 "meeting of the minds" so as to make the settlement binding. *See In re Marriage of Assemi*, 7 Cal.4th
25 896, at 905 (1994). In determining whether the parties entered into a binding settlement, the trial
26 court should consider: (1) whether the parties explicitly defined the material terms; (2) whether the
27 supervising judicial officer questioned the parties regarding their understanding of the terms; and (3)
28 whether the parties expressly acknowledged their understanding of, and agreement to be bound by,

1 those terms. *See Account Management Associates v. Sanglimsuwan*, 91 Cal.App.4th 773, at 778-781
2 (2001). To make this factual determination, the court, in its discretion, may receive oral testimony or
3 determine the motion on declarations. *Account Management Associates, supra*, at 778. Where the
4 judge who presided over the settlement conference also presides over the § 664.6 hearing, she may
5 rely on her own recollection as to what transpired. *Kohn v. Jaymar Ruby, Inc.*, 23 Cal.App.4th 1530,
6 1533 (1994).

7 The Court also has the authority to order specific performance of the settlement agreement or
8 to award damages against the party in breach (or to impose sanctions for contempt). *TNT Marketing,*
9 *Inc. v. Agresti*, 796 F.2d 276, at 278 (9th Cir. 1986). A party may, on noticed motion, be sanctioned
10 for refusing to sign a written settlement that embodies the terms orally agreed to before the Court:
11 “An agreement announced on the record becomes binding even if a party has a change of heart after
12 (he or she) agreed to its terms but before the terms were reduced to writing.” *Doi v. Halekulani*
13 *Corp.* 276 F3d 1131, at 1138 (9th Cir. 2002).

14 **A. Felipe and Patricia Jaramillo Did Not Give Final Assent the Terms of Settlement.**

15 Litigants themselves must clearly indicate their assent, written or orally, to the material terms
16 of a settlement agreement for it to be enforceable under § 664.6. Individual consent is not enough. A
17 valid settlement agreement requires mutual consent. “The existence of mutual consent is determined
18 by an objective rather than subjective criteria, the test being what the outward manifestations of
19 consent would lead a reasonable person to believe.” *Weddington Productions, Inc. v. Flick*, 60
20 Cal.App.4th 793, at 811 (1998); *Bowers v. Raymond J. Lucia Cos., Inc.*, 206 Cal.App.4th 724, at
21 732–733 (2012). Thus, it is clear that all parties have to either sign the settlement agreement or be in
22 court when it is put on the record. *Levy v. Superior Court*, 10 Cal.4th 578, at 585.

23 The parties here did not offer mutual assent to the settlement agreement in this matter.
24 Though Judge Beeler recited her understanding of the material terms of the agreement on January 8,
25 2016, all Plaintiffs were not present to hear the recital. Judge Beeler did not have the opportunity to
26 question each Plaintiff regarding their specific understanding of the material terms of the settlement
27 agreement because the Court’s internet connection was lost shortly beforehand. Though Mr. Lacy
28

1 mistakenly represented to the Court that all parties had agreed because he believed he heard everyone
2 agree to settle, PATRICIA and FELIPE'S intent to congress with the other plaintiffs was literally lost
3 in translation. In addition, after viewing the video footage showing their brother anguishing in pain
4 and impending death, both FELIPE and PATRICIA JARAMILLO believe it is necessary to pursue
5 litigation further. After learning of the misunderstanding, Mr. Lacy promptly informed both the
6 Court and Mr. Pereda. Accordingly, the Court should set aside the agreement of January 8, 2016.

8 **B. Biocini Only Assented to the Terms of the Agreement Because of Mutual Mistake.**

9 Generally, an agreement to settle as a result of a mutually mistaken belief invalidates the
10 agreement. In this case, the mutual mistake was caused by Mr. Lacy's representation that "all" the
11 family members in Colombia had assented to the material terms of the agreement. The undeniable
12 truth is, the loss of the internet connection and incomplete translation during the settlement
13 conference lead to a misunderstanding.³ BIOCINI has consistently advocated for trial before the
14 January 8, 2016 Settlement Conference and after she discovered that some in her family shared her
15 decision to continue to trial. Without this misunderstanding, BIOCINI would have never assented to
16 the settlement terms on January 8, 2016.

19 **CONCLUSION**

20 The parties did not enter into a valid, enforceable settlement agreement on January 8, 2016
21 with Judge Laurel Beeler presiding over the proceeding. There was not a mutual assent to the final
22 terms of the settlement because all parties were not present. In addition, BIOCINI only assented due
23 to a mistaken belief that Based upon the foregoing, Plaintiffs respectfully request that the court issue
24 an Order setting aside the settlement agreement.

28 ³ Attached are true and correct copies of letters from Patricia and Felipe Jaramillo regarding their intent to continue to trial. The letters have been attached as Exhibit A to the Declaration of DeWitt M. Lacy, (hereinafter "Lacy Decl.").

THE LAW OFFICES OF JOHN L. BURRIS

Dated: February 24, 2016

/s/ DeWitt M. Lacy
DeWitt M. Lacy, Esq.
Attorney for plaintiffs